

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHN H. UNDERHILL,

Plaintiff,

v.

Case No. 2:03-cv-137
HON. DAVID W. MCKEAGUE

ILLINOIS STUDENT ASSISTANCE
COMMISSION,

Defendant.

REPORT AND RECOMMENDATION

Plaintiff filed this contract dispute action alleging that defendant is demanding that plaintiff repay student loans in the amount of \$161,163.32, or that plaintiff refinance the loans. Plaintiff denies owing defendant, or anyone else, the amount of \$161,163.32 in student loans. Summons and complaint were executed on defendant on July 9, 2003. Defendant failed to file an answer to the complaint and on August 4, 2003, plaintiff filed an application for entry of default. Default was entered against the defendant on August 5, 2003. Plaintiff has not filed a motion for default judgment. In fact, neither party has filed any pleadings in this matter since the Court entered default on August 5, 2003. Accordingly, it is recommended that plaintiff's complaint be dismissed in its entirety, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute. *See Catz v. Chalker*, 142 F.3d 279, 286 (6th Cir. 1998); *Jourdan v. Jabe*, 951 F.2d 108 (6th Cir. 1991); *Buck v. U.S. Dept. of Agriculture*, 960 F.2d 603 (6th Cir. 1992).

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within ten (10) days of receipt of

this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3. Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: July 5, 2005